

Examiner Not Guilty of Criminal Time Reporting Charges

A Virginia jury acquitted a former patent examiner of criminal larceny charges for allegedly collecting pay for work not done. The charges were based on discrepancies between the examiner's turnstile records and her time sheets. Following a two-and-a-half day trial, the jury returned the verdict after deliberating only 15 minutes. The jury foreman later apologized to the examiner, saying the jury was sorry she'd had to go through the ordeal.

The Department of Commerce Inspector General's Office (IG), with USPTO assistance, initiated the criminal investigation against the examiner, who holds a medical degree, a law degree, and who consistently produced at a level above 130 percent for the agency. For three years (2003-2005) the employee was awarded outstanding job evaluations with commendable quality by two supervisors.

Then she got a new supervisor and her work life took a decided turn for the worse. Difficulties with new supervisor Kevin Sirmons began the first biweek after he took over her art unit in October 2005. Sirmons was often away from his office during that time. As previous supervisors had authorized and without any indication to the contrary from Sirmons, the examiner had a senior primary examiner review and sign applications in Sirmons' absence and submitted them for production credit. Sirmons held them until "count Monday," the submission deadline day when, without a word to the examiner, he left them in her office with the primary examiner's approving signature crossed out. She, as a result, had abysmally low production that biweek. He told her he was upset she had gone to the primary examiner and that, on his watch, everything had to go through him.

The relationship was off to a rocky start. The examiner tried to get out but was not allowed to transfer to another art unit. Two months of continuous difficulties with Sirmons brought the examiner to a level of frustration she could not tolerate. She went on annual leave in December 2005 and subsequently resigned from the USPTO in January 2006.

In June 2006 IG Special Agent Rachel Ondrik paid a surprise visit to the examiner at home and asked about her time accounting. Ondrik indicated that there were a number of discrepancies between the examiner's badge-in, badge-out turnstile records and the time she reported on her time and attendance forms. Ondrik questioned other USPTO examiners in their offices about this case in ways that they described as witness intimidation. (See *POPA News*, Jan. 2007.) The Commonwealth of Virginia arrested the examiner in July 2006 on charges of obtaining money, and attempting to obtain money, under false pretenses. The trial was held in January 2007.

Ondrik testified at the trial that one of the examiner's earlier supervisors "had warned her that those turnstile records could be audited and her time sheets should match them." The examiner testified that she had never been so warned. Interestingly, USPTO Director of Security and Safety J. R. Garland testified at the trial that the turnstile design was not intended for time keeping purposes. (See following article.)

Trial evidence and testimony showed that the defendant had spent some mornings working from her parents' home because of difficulties with her pregnancy. She would then go into the agency in the late mornings or early afternoons to complete her work. She would claim the full number of hours she had worked, even though witnesses testified that she had not received prior approval to telework

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Turnstiles — For Security, Not Time Keeping

The Commonwealth of Virginia called USPTO Director of Security and Safety J. R. Garland as a prosecution witness during the trial of an examiner for alleged theft through improper time reporting. On cross examination, as noted in the following verbatim excerpt from the trial transcript, Mr. Garland explained the intent of the turnstile design versus its current time keeping use.

Q: How do you use this system for time and attendance records?

Garland: I don't know what you mean, sir. I don't use it for time and attendance records. I use it as a security system.

Q: It's a security system.

Garland: Yes, sir.

Q: It's not a time and attendance system?

Garland: No, sir. It just records times people come and go.

Q: And you are the person who is in charge of this system; correct? Were you part of the—were you involved in the

implementation of the system at the new Carlyle complex?
Garland: Yes, sir.

Q: And it was never intended to be a time and attendance system, was it?

Mr. Casey [the prosecutor]: Judge, objection to relevance.

Mr. Schertler [the defense attorney questioning Garland]:

That's what they're using it for.

The Court: Overruled.

Garland: I can't speak to everybody's intentions.

Q by Mr. Schertler: You're the man in charge of it.

Garland: I didn't intend on it for time and attendance. For security. Not for people's times.

Q: And you don't give this out every two weeks to the patent examiners and PTO employees, so that they can prepare their time and attendance sheets using the security system, do you?

Garland: No, sir. I do not.

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(the hoteling program didn't exist at the time). During the times in question, the examiner maintained an outstanding production level in excess of 130 percent, the maximum percentage for which the USPTO pays examiners.

Other evidence at trial established that some of the turnstile records did not represent an accurate record of employees' time and attendance. Testimony showed that, on more than one occasion, the examiner was logged in and working on USPTO computers (something she could not have done remotely) while turnstile records indicated that she was not in the buildings. The evidence proved that the turnstile records, while perhaps useful for security purposes, could not be relied upon for employee attendance.

The jury recognized that, while the examiner may have violated an agency policy on telework, her actions were not criminal. The examiner had indeed given the USPTO every bit of work it paid her for plus more.

After the verdict, the jury foreman approached the defendant to say that he and the jury were sorry that the examiner and her family had to go through the trial. ▼

International Examiners' Reps Appeal to Patent Offices

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- The role of incentives within organizations and the extent to which different kinds of incentives are appropriate for the EPO.

The main findings of the report are:

- The standard of patentability is a key element in the system.
- Too high or too low of a standard will have adverse consequences on the system.
- There is an inherent relationship between quality and quantity and it is important to achieve an appropriate balance.
- A decline in quality has the potential for increasing workload. Applicants' perception of a lowered standard of patentability may induce a rise in the number of low-quality applications.
- Examiners are interdependent. Speeding up the work of one could slow down the work of others.
- There needs to be an appropriate balance between implicit incentives that function via performance appraisal and the esteem of peers and explicit incentives such as extra payments for higher production.

POPA's impression of the bottom line of this report is: It is in the best interest of the patent system to give examiners sufficient time to do a quality job.

A complete copy of the SUEPO study is available at http://idea.fr/doc/by/seabright/report_epo.pdf. ▼

Impasses Panel Supports POPA's Take on Negotiations Ground Rules

POPA-USPTO contract negotiations are about to begin since the Federal Service Impasses Panel (FSIP) recently determined not to decide a ground rules dispute between the two parties.

The USPTO had asked the panel to rule that, if the agency head disapproved parts of the resulting negotiated contract, those parts would be renegotiated while the rest of the contract was implemented. POPA objected to such a ground rules change because it would enable the USPTO to pick out and eliminate those parts more favorable to employees while maintaining and implementing those parts more favorable to the agency. In essence, the agency wanted a line-item veto over any contract provision it didn't like. This would negate the collective bargaining process.

Current federal labor law requires that, if a contract provision is disapproved on agency head review, the *entire agreement* does not go into effect, not just the disapproved provision. Then the parties need to go back to negotiations with the entire agreement open for discussion. This process insures that the final agreement represents a balance of give-and-take compromises for both the agency and employees.

POPA and the USPTO previously reached agreement on all other ground rules provisions, but remained at impasse over the agency's proposed process for agency head review. POPA argued to the FSIP that the agency's proposed ground rule would waive the union's statutory right to renegotiate the agreement — a right the FSIP did not have the authority to waive.

The FSIP found for POPA by refusing to take jurisdiction of the impasse. The remaining ground rules stand, putting contract negotiations on track for this summer. ▼

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Examiners Vote with Their Feet on Flat Goal Pilot Program

POPA Encourages Productivity Incentive Alternatives

When the USPTO announced its Flat Goal Pilot program in April 2006, it set a goal of enrolling 300 examiners by this year's sign-up deadline of Feb. 23. After multiple employee briefings and e-mailed Commissioner's Corner endorsements of the program, by the end of February the pilot had only 105 volunteers. Even after extending the deadlines, management has only convinced approximately 180 employees to sign up—not a rousing vote of confidence in management's program.

Examiners have voted with their feet.

The agency worked hard to inform all 5,000+ examiners about the program. The first three of nine Flat Goal Pilot employee briefings by USPTO managers were standing room only, with about 300 examiners attending each briefing. The crowds had diminished by half as of the fourth briefing, as word spread through the examining corps, and attracted far fewer by the last one. Examiners' questions about production dominated every session.

"If this had been the laptop pilot program seeking volunteers, management would've had 300 sign up on the first day," commented one senior primary examiner.

Examiners Do the Math

Examiners are smart about their careers. As the following letters show, many did the math and learned that the Flat Goal program would penalize, rather than promote, their production and career success, so they didn't sign up. On the other hand, those who volunteered for the program likely calculated that they'd do well. With both trends, this self-selected sample will produce pilot results that can only rightly be used for a future voluntary program and not extrapolated to the examining corps as a whole.

However, as one of the letter writers aptly noted, the USPTO intends to use the results of the pilot to support its move to a flat goal production system for all examiners. The first objective outlined in the USPTO Strategic Plan for 2007-2012 includes an initiative to "Develop alternatives to the current performance and bonus systems." (www.uspto.gov/web/offices/com/strat2007/stratplan2007-2012.pdf)

Cut Losses and Move Forward

The USPTO has more and better options for providing production incentives to examiners. POPA agrees with the

employee who wrote that an employee-friendly program "that rewards instead of punishes" is well within the agency's reach.

For example, POPA has repeatedly recommended creating more levels of production awards. Currently examiners receive a production award if they achieve 110 percent of their production goal. If, after striving for a while, they realize they can't make that goal, they naturally think, "Why

knock myself out with all this voluntary overtime if I can't get something for my effort?" So their production drops to a fully successful level.

If the USPTO creates one or more intermediate production awards—say at

105 percent or at every percentage point over 100 percent—it encourages examiners to try their best throughout the quarter, rewarding them for every ounce of production effort. The cumulative effect of so many examiners giving so many extra ounces every quarter would equal tons more production—and a big boost to employee morale.

POPA stands ready to work with USPTO leaders to design cost-effective production programs that reduce the patent backlog while encouraging, rewarding and respecting employees. ▽

The Famous Engineering Formula

$$Flat^{goal} = Flat^{no}$$

Examiners Speak Out on Flat Goal Pilot

The names of the examiners who authored the following letters were withheld for their protection.

I won't be going on the Flat Goal Pilot because, had I done so last quarter, I would have been fired.

Using the flat rate calculations presented [by the USPTO], I decided to see how I would have fared under the proposed pilot.

Last quarter I used a fair amount of my accumulated annual leave. I took nine days at the beginning of the quarter and four days at the end, with perhaps a few days or half days here and there.

I also had 69 hours of other time, which I used:
■ training two junior examiners (one probationary);

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